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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT TACOMA

7 DAVID MUNGAI NJENGA,  
8 Plaintiff,

9 v.

10 WARDEN NORTHWEST DETENTION  
11 CENTER, *et al.*,

12 Defendants.

Case No. C08-5679 RJB/KLS

REPORT AND  
RECOMMENDATION

**NOTED FOR:  
April 24, 2009**

13 This case was referred to United States Magistrate Judge Karen L. Strombom pursuant to 28  
14 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Plaintiff filed a civil rights complaint under 42 U.S.C. §  
15 1983, but failed to pay a filing fee or file an application to proceed *in forma pauperis*. Dkt. # 1. To file a  
16 complaint and initiate legal proceedings, a plaintiff must pay a filing fee of \$350.00 or file a proper  
17 application to proceed *in forma pauperis*. Accordingly, Plaintiff was ordered to file an application to  
18 proceed *in forma pauperis* or pay the filing fee. Dkt. # 3. Plaintiff has not responded to the Court's  
19 Order.

20 **I. DISCUSSION**

21 The court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper  
22 affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the court has broad discretion in denying an  
23 application to proceed *in forma pauperis*. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963), *cert. denied*,  
24 375 U.S. 845 (1963).

25 Several district courts have ruled that denial of *in forma pauperis* status is not unreasonable when  
26 a prisoner is able to pay the initial expenses required to commence a lawsuit. *See Temple v. Ellerthorpe*,  
27 586 F.Supp. 848 (D.R.I. 1984); *Braden v. Estelle*, 428 F.Supp. 595 (S.D.Tex. 1977); *U.S. ex rel. Irons v.*  
28 *Com. of Pa.*, 407 F.Supp. 746 (M.D.Pa. 1976); *Shimabuku v. Britton*, 357 F.Supp. 825 (D.Kan. 1973),

1 *aff'd*, 503 F.2d 38 (10th Cir. 1974); *Ward v. Werner*, 61 F.R.D. 639 (M.D.Pa. 1974).

2 On November 12, 2008, Plaintiff filed his proposed petition for civil rights violation. Dkt. # 1.  
3 On November 17, 2008, the Clerk advised Plaintiff that he must submit either the full \$350.00 filing fee  
4 or an application for *in forma pauperis* status by December 17, 2008 or his action may be subject to  
5 dismissal. Dkt.# 2. On February 10, 2009, the Court ordered the Plaintiff to pay the \$350.00 filing fee or  
6 submit a proper application to proceed *in forma pauperis* no later than March 6, 2009. Dkt. # 3. The  
7 Court advised Plaintiff that his failure to either pay the filing fee or submit a proper application to proceed  
8 *in forma pauperis* by the March 6, 2009 deadline would be deemed a failure to properly prosecute this  
9 matter and that the undersigned would recommend dismissal of this matter. *Id.* Plaintiff did not respond  
10 to the Court's Order, pay the filing fee or submit an application to proceed *in forma pauperis*.

## 11 II. CONCLUSION

12 The undersigned recommends the Court dismiss Plaintiff's Complaint unless he pays the required  
13 \$350.00 fee **within thirty (30) days** of the Court's order.

14 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), the parties shall  
15 have ten (10) days from service of this Report and Recommendation to file written objections thereto. *See*  
16 *also* Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those objections for purposes of  
17 appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Fed. R. Civ. P.  
18 72(b), the Clerk is directed to set this matter for consideration on **April 24, 2009**, as noted in the caption.

19 Dated this 6th day of April, 2009.

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22 Karen L. Strombom  
23 United States Magistrate Judge  
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